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| APPLICATION NO.   | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO.  | CONFIRMATION NO. |
|---|-------------|----------------------|----------------------|------------------|
| 10/750,099  | 12/31/2003  | Paul J. Harper       | 006461.P001          | 9617             |
| 7590  | 09/29/2004  |                      | EXAMINER             |                  |
| Stephen M. De Clerk<br>BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN LLP<br>Seventh Floor<br>12400 Wilshire Boulevard<br>Los Angeles, CA 90025 |             |                      | NICOLAS, FREDERICK C |                  |
|   |             |                      | ART UNIT             | PAPER NUMBER     |
|   |             |                      | 3754                 |                  |
| DATE MAILED: 09/29/2004   |             |                      |                      |                  |

Please find below and/or attached an Office communication concerning this application or proceeding.

|                              |                      |                 |
|------------------------------|----------------------|-----------------|
| <b>Office Action Summary</b> | Application No.      | Applicant(s)    |
|                              | 10/750,099           | HARPER, PAUL J. |
|                              | Examiner             | Art Unit        |
|                              | Frederick C. Nicolas | 3754            |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### **Status**

- 1) Responsive to communication(s) filed on 31 December 2003.
- 2a) This action is **FINAL**.                            2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### **Disposition of Claims**

- 4) Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-11 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### **Application Papers**

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### **Priority under 35 U.S.C. § 119**

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### **Attachment(s)**

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
 Paper No(s)/Mail Date \_\_\_\_\_
- 4) Interview Summary (PTO-413)  
 Paper No(s)/Mail Date \_\_\_\_\_
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: \_\_\_\_\_

**DETAILED ACTION**

***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-11 are rejected under 35 U.S.C. 102(b) as being anticipated by Klassen 4,133,457.

Klassen discloses a hand-held container for a liquid (10), which comprises a main body (16) having an internal volume for holding the liquid, a burstable member (26) located over and peripherally sealing with an outlet out (14) of the main body so that the burstable member and the main body jointly retain the liquid within the internal volume as seen in Figure 2, bursting of the burstable member allowing the liquid through the outlet of the main body (col. 4, ll. 21-58), a guide (18) on a side of the burstable member opposing the main body, the liquid flowing through the guide after flowing through the outlet as seen in Figure 4, the burstable member is a membrane which at least partially forms a weakness along which the membrane can tear to allow the liquid out of the internal volume as seen in Figures 3-4, wherein two adjacent portions (28) of the membrane form the weakness, so that the adjacent portions separate along the weakness, the membrane has at least three weaknesses (30,32), so that the membrane has at least three portions that separate from one another, the main body is made of a flexible material that can be deformed in a squeezing action to

pressurize the liquid, pressure of the liquid causing tearing of the membrane (col. 4, ll. 21-58), and deformation of the outlet causing tearing of the membrane as seen in Figure 4 and it is inherent that the deformation of the outlet of Klassen will cause tearing of the membrane in as much as the applicant's claimed invention, a retaining component (24).

### ***Conclusion***

3. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Johnson 3,118,573, Hammond et al. 4,830,205, Lowry 6,705,492, Kieras 5,911,344, Musher 3,410,460 and Steiner et al. 4,646,945 disclose other types of hand-held container for a liquid.
4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Frederick C. Nicolas whose telephone number is (703)-305-6385. The examiner can normally be reached on Monday - Friday from 9:00 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mancene L. Gene, can be reached on 703-308-2696. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For

more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

FN  
September 28, 2004



9/28/04

Frederick C. Nicolas  
Patent Examiner  
Art Unit 3754